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In the Supreme Court of the United States

October Term—1947.

No. 522.

HOWARD P. ROOT AND RAY THOMAS, Individually, and as Business Agent and President, respectively, and as Representative Members of AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF AMERICA, LOCAL UNION No. 576, and Other Unnamed Members of said Union, *Petitioners,*

vs.

FRED WOLFERMAN, INC., a Corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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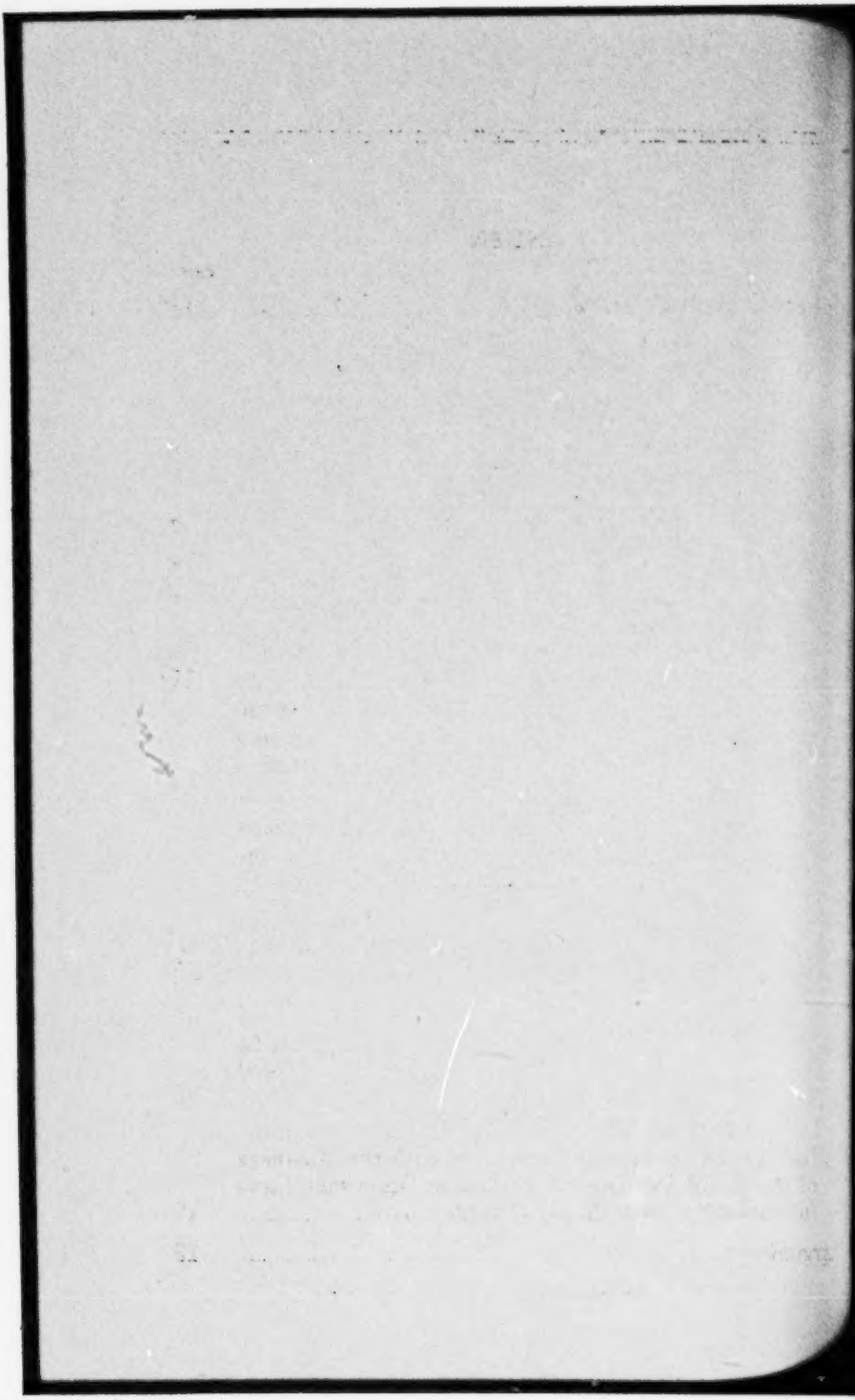

INDEX.

	PAGE
Petition for Writ of Ceriorari	1
Opinion by the Supreme Court of Missouri	2
Jurisdiction	2
Summary of Statement of the Matter Involved	3
Nature of Proceeding Below	3
Controlling Facts From the Record	4
Reasons Relied on for the Allowance of the Writ	7
Questions Presented	8
Conclusion of Brief for Writ	9
Brief in Support of the Petition	10
Specifications of Errors Intended to Be Urged	11
(a) The Court of Last Resort Committed Constitutional Error by Enjoining a Labor Union in a Labor Dispute from Peaceable Picketing for a Lawful Object	11
(b) The Injunction Issued by the State Court Materially Abridges, Impairs and Conditions the Exercise of Constitutional Rights of Petitioner	11
(c) Peaceable Picketing for the Purpose of Inducing Employees to Become Members of the Union Is for a Lawful Purpose	12
(d) The Injunction Issued by the Lower Court Restricting the Right of Peaceable Picketing Amounts to a Denial and an Abridgement of Said Constitutional Rights	12
(e) The Fact That Peaceable Picketing for Lawful Purpose Seriously Interferes with the Business of the Employer Does Not Change Otherwise Lawful Picketing Into Illegal Conduct	12
Argument	13

PAGE

Peaceable picketing, in a labor dispute, by exhibition of banners, distribution of pamphlets and other literature, by word of mouth and by other means appropriate and expedient to ordinary and usual picketing by labor unions, is the exercise of freedom of speech and of the press and of assembly, preserved, guaranteed and protected by Amendments One and Fourteen to the Constitution of the United States 13

II. Peaceable picketing by a labor union in a labor dispute for the purpose of inducing employees of the employer picketed to become members of the union, or to obtain by lawful means a majority of the employees as a bargaining agent or unit is for a lawful purpose and is an exercise of constitutional right that cannot be abridged by the legislature or by a court 15

III. The fact that peaceable picketing may most seriously interfere with the conduct of business and even work apparent injustice to the employer or third persons, does not change otherwise lawful picketing into illegal conduct 19

IV. The abridgement and impairment of labor's constitutional right to picket for a lawful cause amounts to a denial of such constitutional rights 21

Submission 23

Cases Cited.

American Federation v. Bain, 106 Pac. (2d) 544, 165 Oregon 183 22

American Federation v. Swing, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855 ..... 13, 18, 21

Bakery Drivers' Union v. Wohl, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 13

Baxley v. United States, 134 F. (2d) 937 22

PAGE

Bridges v. California, 314 U. S. 252, 62 S. Ct. 194 22

Cafeteria Union v. Angelos, 320 U. S. 293, 64 S. Ct. 126 ..... 13, 18, 21

Carlson v. California, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104 ..... 13, 14, 18, 21

Carpenters' Union v. Ritter's Cafe, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143 13

Fur Workers' Union No. 72 v. Fur Workers' Union No. 21238, 70 App. D. C. 122, 105 F. (2d) 1 21

Graham v. Jones, 200 La. 137, 7 Southern (2d) 688 ..... 21, 22

Milk Wagan Drivers' Union v. Meadowmoor, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A. L. R. 1200 13

Park & Tilford Corp. v. International Brotherhood (California), 165 Pac. (2d) 891 ..... 15, 17, 20, 21

Senn v. Tile Layers' Union, 301 U. S. 468, 57 S. Ct. 857, 81 L. Ed. 1229 ..... 13, 21

State v. Butterworth, 142 A. 57, 104 N. J. Law 579 22

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 ..... 13, 14, 15, 18

United States v. Hutcheson, 312 U. S. 219, 232, 61 S. Ct. 463, 85 L. Ed. 788 21

Yoerg Brewing Co. v. Brennan, 59 F. Sup. 625 ..... 15, 21

Miscellaneous Authorities.

Title 28, Section 344, Judicial Code 237 2

29 U. S. C. A. 151 ..... 5, 17

Supreme Court Rule 38-5 (a) 7

2 Cooley's Constitutional Limitations 22

In the Supreme Court of the United States

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No. ————.

HOWARD P. ROOT AND RAY THOMAS, Individually, and as Business Agent and President, respectively, and as Representative Members of AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF AMERICA, LOCAL UNION No. 576, and Other Unnamed Members of said Union, *Petitioners.*

VS.

FRED WOLFERMAN, INC., a Corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

(Figures in parentheses are pages of the printed record.)

Petitioner Howard P. Root and Ray Thomas, individually, and as Business Agent and President, respectively, and as Representative Members of Amalgamated Meat Cutters and Butcher Workmen of America, Local Union No. 576, and other unnamed members of said Union, pray

that a writ of certiorari be issued to review the judgment of the Supreme Court of Missouri sitting *en banc*, the court of last resort of said state, entered on September 8, 1947 (136). In due time (September 23, 1947) and in proper form and substance petitioners filed motion for rehearing (146) which motion was entertained and heard by the court and was overruled on October 13, 1947 (153).

Opinion by the Supreme Court of Missouri.

The opinion by the Supreme Court of Missouri is found in 204 S. W. (2d) 733 (Advance sheets of November 18, 1947) and is also found in the certified transcript at pages 136 and following.

Jurisdiction.

The petition for certiorari has been timely filed. The motion for rehearing by petitioners filed in the Supreme Court of the State was overruled October 13, 1947. This petition, the record and supporting brief are being duly filed in the office of the Clerk of the Supreme Court of the United States and the case is being docketed within three months from that date. The jurisdiction of this Court is invoked under Title 28, Section 344, Judicial Code 237 as amended.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

I.

Nature of Proceeding Below.

The proceeding below was upon the petition of Fred Wolferman, Inc. (respondent), in the Circuit Court of Jackson County, Missouri, praying for a final order of injunction against Amalgamated Meat Cutters and Butcher Workmen of America, Local Union No. 576, affiliated with the American Federation of Labor, and against officers and members thereof (petitioners) perpetually enjoining them from (a) picketing respondent's places of business (b) from demanding that respondent enter into a collective bargaining contract (c) from attempting to require that respondent require its employees to join the union (d) from publishing that a strike was in effect and (e) other relief (2).

The following excerpt from the opinion of the state court indicates clearly the issue before the Court.

> "After a hearing the trial court permanently enjoined defendants:
>
> (a) 'From making demand that plaintiff sign or enter into a collective bargaining or other agreement with defendants, or the Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 576, so long as the defendants and said local union do not represent the majority of the meat cutters and butchers in the employ of the plaintiff.'
>
> (b) 'From requiring or attempting to require that plaintiff require persons employed by it as butchers or meat cutters, or other employees in plaintiff's meat department to join or become members of the said local union as a condition of their employment or continued employment by plaintiff.'

(c) 'From announcing, publishing or declaring that a strike is in effect at or about the premises of plaintiff's stores and places of business in Kansas City, Missouri, when such is not the case.'

Plaintiff also sought an order enjoining defendants. 'From establishing any picket line or lines in and about plaintiff's stores or places of business which would affect, destroy or interfere with the receipt and delivery of merchandise to and from plaintiff's stores and places of business in the usual and ordinary course of business.'

The trial court refused to enter such order and plaintiff has appealed'' (138-139).

Petitioners acquiesced in the judgment of the lower court but respondent appealed upon the ground that the lower court should have entered an order enjoining defendants from establishing any picket line as specified in the next preceding quoted paragraph. The Supreme Court held that the injunction should have included the provision sought by plaintiff but denied by the lower court and reversed the judgment and remanded the cause for entry of said additional injunctive provision, in the words quoted above (146).

It is the question, of whether the State Court in entering said anti-picketing injunction deprived petitioners of their constitutional rights, timely and specifically invoked as hereinafter specified and amplified, that is presented to the Supreme Court of the United States by this petition.

Controlling Facts From the Record.

There was evidence to show that Wolferman conducted four retail groceries and meat markets in Kansas City, Missouri, employing nineteen butchers, at least three of whom were union men. Plaintiff alleged that the defend-

ants attempted to obtain a closed shop contract and demanded that Wolferman use its influence to induce its butchers to join the union. Wolferman refused to sign the contract because, as alleged, the union did not represent a majority of its butchers and refused to use its influence to cause the butchers to join the union because the Labor Relations Act, 29 U. S. C. A. 151, prohibited it from encouraging employees to join a particular union. A picket line was placed, there was no violence or threats or mass picketing or disturbance of peace (114 and following).

Defendants below by answer and testimony disclaimed certain rights as follows:

> "After the case was assigned to this Division, defendants filed an answer and gave testimony to the effect that they would not request of the plaintiff any collective bargaining contract as the representatives of plaintiff Meat Cutters and Butcher Workmen until and if they should have as members of said local union the majority thereof; and that they would not request of the plaintiff or any of the plaintiff's representatives that they request or urge any of said Meat Cutters or Butcher Workmen to join said local union, but that they desired to picket at plaintiff's stores for the purpose of informing the public of the failure of said Meat Cutters and Butcher Workmen to join said local union" (117-118).

And defendants renounce any intention of picketing in the future for recognition as representative of the Butcher Workmen until a majority thereof shall be members of the local union, and further renounced any intention of picketing to cause the plaintiff to request its butchers to join said union (120). The lower court recited as follows:

> "Defendants request the right to picket at plaintiff's stores for the purpose of informing the public of the failure of the Meat Cutters and Butcher Work-

men in the employ of the plaintiff to join the defendants' union. The court accepts the said statement of the defendants as true. The court finds that picketing for such purpose is lawful and cannot be enjoined" (121).

The lower court also declared:

"The court believes that the defendants if denied the right to picket for the purpose for which they have assured the court they desire to picket as herein stated, would be restraint in their right of free speech as guaranteed by the First and Fourteenth Amendment to the Constitution of the United States and Paragraphs Eight and Twenty-Nine of Article I of the Constution of the State of Missouri. By the issuance of the injunction herein it is not intended by the court to in any way restrain picketing by defendants except for the purpose herein specifically enjoined" (122).

Defendants demonstrated the good faith of their renouncement of the right to picket for any of the alleged unlawful purposes by accepting the decree enjoining them from picketing for such purposes. They asserted in the lower court and in the Supreme Court of the state their right to picket for the sole purpose of informing the public that the meat cutters at Wolferman's were not union men, manifestly a lawful purpose.

The Supreme Court in unavoidable effect enjoined the defendants from peaceably picketing solely for the purpose of informing the public that Wolferman's Meat Cutters were non-union men, if such picketing "would affect, destroy, or interfere with the receipt and delivery of merchandise to and from paintiff's stores and places of business in the usual and ordinary course of business" (146). Petitioners contended and now contend that the right peaceably to picket solely for the specified purpose was a constitutional right of petitioners and that the limitation

placed thereon by the Supreme Court impaired and deprived them of their constitutional rights as specifically invoked.

Defendants (petitioners) at their first appearance in the *nisi prius* court, invoked their constitutional rights and pleaded that the issuance of a restraining order or an injunction as prayed would be to deprive them of their constitutional rights guaranteed by the First and Fourteenth Amendments to the Constitution of the United States (23, 24, 147), and particularly freedom of speech and of press and of assembly.

Said constitutional question was carried into the defendants' answer and was submitted to the State Supreme Court and was finally reasserted in petitioners' motion for rehearing (same pages of record).

Reasons Relied On for the Allowance of the Writ.

There are special and important reasons for this Court in this case to exercise a sound judicial discretion and grant the writ.

I.

The Supreme Court of the State of Missouri *en banc*, being the highest court of that state in which a decision could be had, has decided a federal question of substance in a way probably not in accord with applicable decisions of the Supreme Court of the United States (Rule 38-5 (a)).

II.

Petitioners have, in said state court, and in all proceedings therein, specifically set up and claimed a title, right, privilege and immunity under the specified provisions of the Constitution of the United States.

III.

The said state court, in said proceeding, by its final judgment, has deprived petitioners of their title, right, privilege and immunity under the specified clauses of the Constitution of the United States, so set up and claimed.

IV.

The question of the constitutional authority of a state to impose conditions upon peaceable picketing for a lawful purpose in a labor dispute, as was done in a specific manner in this case, is of such transcendent importance in the relationship of labor and employers that it should be settled by an authoritative decision of the Supreme Court of the United States and for that purpose this cause should be brought before that court.

The reasons relied upon for the allowance of the writ are specified and amplified and applied to the record in the brief accompanying the petition, but which for the sake of brevity are not here repeated in detail.

Questions Presented.

I.

Where a labor union engages in peaceable picketing for the sole purpose of informing the public that employees of the employer picketed are non-union men and for the purpose peaceably of inducing such employees to become members of the union, and when the picketing is otherwise lawful, may the court enjoin such picketing if the result thereof "would affect, destroy or interfere with the receipt and delivery of merchandise to and from plaintiff's stores and places of business in the usual and ordinary course of business," without such injunction violating the provisions of the Constitution as herein specified?

II.

May a court, consistent with fundamental rights of free men preserved and guaranteed in Amendments One and Fourteen to the Constitution of the United States, enjoin peaceable and otherwise lawful picketing by a labor union in a labor dispute, for the sole reason that in the court's opinion such picketing would "affect, destroy or interfere with" the conduct of the business as regards receipt and delivery of merchandise?

III.

Is the constitutional right of labor peaceably to picket for lawful purposes in a labor dispute, conditioned that such picketing shall not "affect, destroy or interfere with" the conduct of the business of the employer as regards receipt and delivery of merchandise?

IV.

Is not the condition imposed by the state court to peaceable picketing for a lawful purpose in a labor dispute, in and of itself, such an impairment of the constitutional rights of labor that it is in effect a denial of such constitutional rights?

Conclusion.

Wherefore and by reason of all which the petitioners respectfully pray that this Court shall issue its writ of certiorari to the Supreme Court of the State of Missouri *en banc*.

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vs.

FRED WOLFERMAN, INC., a Corporation, *Respondent.*

BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

I.

The petition for the writ of certiorari contains, so that there is not here repeated, the following:

(a) Reference to the official report of the decision below.

(b) Statement of the grounds on which the jurisdiction of this court is invoked.

(c) A concise statement of the case containing all that is material to the consideration of the questions presented.

(d) Questions presented.

(e) Reasons relied upon for the issuance of the writ.

II.

There is in this brief presented:

(a) Specification of the assigned errors.

(b) Further specification of the grounds and reasons for the court to exercise its discretion for the issuance of the writ, supporting citations and application thereof to the record herein.

(c) Argument.

Specification of Errors Intended to Be Urged.

A.

The court of last resort in the State of Missouri has entered or directed to be entered, a final injunction enjoining a labor union and its officers and members in a labor dispute from peaceable picketing for a lawful object where such picketing affects, destroys or interferes with the conduct of the employer's business. Such action by the court deprives, impairs and abridges the constitutional rights of freedom of speech and of the press and of assembly preserved and guaranteed by the First Amendment to the Constitution of the United States.

B.

Peaceable picketing in a labor dispute by banners, word of mouth or other appropriate means is the exercise of freedom of speech and of the press and of assembly

and the injunctive orders of the state court do materially abridge, impair and condition the exercise of such constitutional rights in violation of said constitutional provisions.

C.

Peaceable picketing by a labor union in a labor dispute for the purpose of inducing employees of the employer picketed to become members of the union is for a lawful purpose and such picketing may not be enjoined without violating the said constitutional rights of petitioners.

D.

The restrictions placed upon the right of peaceable picketing for a lawful purpose by the injunction issued by the state court constitute in and of themselves a denial and abridgement of said constitutional rights and for said reason said injunctive order is void.

E.

The fact that peaceable picketing for a lawful purpose may seriously interfere with the conduct of the business and even work apparent injustice to the employer does not change otherwise lawful picketing into illegal conduct.

ARGUMENT.

Peaceable picketing, in a labor dispute, by exhibition of banners, distribution of pamphlets and other literature, by word of mouth and by other means appropriate and expedient to ordinary and usual picketing by labor unions, is the exercise of freedom of speech and of the press and of assembly, preserved, guaranteed and protectd by Amendments One and Fourteen to the Constitution of the United States.

Not only may such rights not be denied but they may not be materially abridged, impaired or conditioned.

The constitutional prohibition is against "abridging the freedom of speech or the press."

The foregoing provisions of constitutional law have been clearly, expressly and of late years uniformly decided by the Supreme Court of the United States. The leading cases are as follows: *Senn* v. *Tile Layers Union,* (May 24, 1937) 301 U. S. 468, 57 S. Ct. 857, 81 Law Ed. 1229; *Thornhill* v. *Alabama,* (April 22, 1940) 310 U. S. 88, 60 S. Ct. 736, 84 Law Ed. 1093; *Carlson* v. *California,* (April 22, 1940) 310 U. S. 106, 60 S. Ct. 746, 84 Law Ed. 1104; *American Federation* v. *Swing,* (February 10, 1941) 312 U. S. 321, 61 S. Ct. 568, 85 Law Ed. 855; *Milk Wagon Drivers Union* v. *Meadowmoor,* (February 10, 1941) 312 U. S. 287, 61 S. Ct. 552, 85 Law Ed. 836, 132 A. L. R. 1200; *Bakery Drivers Union* v. *Wohl,* (March 30, 1942) 315 U. S. 769, 62 S. Ct. 816, 86 Law Ed. 1178; *Carpenters Union* v. *Ritter's Cafe,* (March 30, 1942) 315 U. S. 722, 62 S. Ct. 807, 86 Law Ed. 1143; *Cafeteria Union* v. *Angelos,* (November 22, 1943) 320 U. S. 293, 64 S. Ct. 126.

The Extended quotations are unnecessary but some pertinent language of the Supreme Court is not inappropriate.

"For the reason set forth in our opinion in *Thornhill* v. *Alabama, supra,* publicizing the facts of a labor dispute in a peaceful way, through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgement by a state." *Carlson* v. *California,* 310 U. S. 106, 60 S. Ct., l. c. 749

"The freedom of speech and of the press which are secured by the First Amendment against abridgement by the United States are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgement by a state. The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and feasible reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evils averted by the courageous exercise of the right of free discussion. Abridgement of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of corrective error through the processes of popular government." *Thornhill* v. *Alabama,* 310 U. S. 88, 60 S. Ct. 740-741.

The court then proceeded squarely to a decision of whether freedom of speech as preserved in the Constitution is applicable to peaceable picketing and having squarely met the question, squarely decided it.

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitu-

tion. *Hague* v. *C. I. O.,* 307 U. S. 496, 59 S. Ct. 954, 83 Law Ed. 1423; *Schneider* v. *State,* 308 U. S. 147, 155, 162, 163, 60 S. Ct. 146, 151. See *Senn* v. *Tile Layers Union,* 301 U. S. 468, 478, 57 S. Ct. 857, 862, 81 Law Ed. 1229." *Thornhill* v. *Alabama,* 310 U. S. 88, 60 S. Ct. l. c. 744.

II.

Peaceable picketing by a labor union in a labor dispute for the purpose of inducing employees of the employer picketed to become members of the union, or to obtain by lawful means a majority of the employees as a bargaining agent or unit is for a lawful purpose and is an exercise of constitutional right that cannot be abridged by the legislature or by a court.

Yoerg Brewing Company v. *Brennan,* 54 Fed. Supp. 625.

Park and Tilford Corporation v. *International Brotherhood (California)* 165 Pac. (2d) 891.

The case of *Yoerg Brewing Company, et al.,* v. *Brennan, et al.,* 59 F. Supp. 625, was one in which one union had been certified as the collective bargaining agent for the employees of the Brewing Company by the National Labor Relations Board. A rival union continued its activities in its effort to organize the workers. The Brewing Company commenced an action in the United States District Court of Minnesota "to restrain all activity of defendants in furtherance of an alleged illegal strike." Such a restraining order was issued. Defendants filed a motion to vacate the restraining order and dismiss the bill, which motion was granted. The court stated at l. c. 626:

> "The question raised, being deemed highly important and novel, the judges of this district sat *en banc.*"

The judges were Nordbye, Joyce and Bell.

That court said at l. c. 629:

"At the outset, it should be noted that there is an utter absence of any provisions in the National Labor Relations Act, 29 U. S. C. A. 151 *et seq.*, which require a union to cease a labor dispute because of the certificate of the Board designating another union as the sole bargaining agent and representative of the employees. True, the minority union has no standing as the collective bargaining agent of the employees covered by the election, but the Board's mandate does not prevent the minority union from striking or otherwise seeking to manifest its dissatisfaction or opposition to the results. Its right to strike is preserved by Section 163, Title 29, U. S. C. A., which provides: 'Nothing in sections 151-166 of this title shall be construed so as to interfere with or impede or diminish in any way the right to strike.' Certainly, it is clear that no court has authority to order the striking teamsters back to work. In absence of some prohibition in the National Labor Relations Act, it seems logically to follow that this strike may continue in so far as it may pursue lawful means to publicize its grievances. That there are legitimate channels in which the striking union may direct its activities seems quite apparent. * * * The strkers, it would seem, have the unquestionable right to inform their fellow members of the American Federation of Labor, as well as the public, that they are on strike in protest against representation by the Brewery Workers' Union. The strikers presumably may labor through the medium of a strike in the hope that such activities may cause the Board to change its views regarding the propriety of having a craft election rather than representation by a so-called industrial union. Through the medium of the strike, the strikers may entertain the hope that some members of the Brewery Workers' Union may perchance desert that union and come into the ranks of the American Federation of Labor. These and other objectives and aims were not foreclosed by the

Board's determination. If we grant that the Teamsters' Union has a right to strike and that in carrying out such a strike it may lawfully publicize its grievances, can there be any serious question that there now exists a labor dispute and that at least some of the activities of the strikers which are sought to be curtailed are inextricably part of such strike." (Emphasis supplied.)

The case of *Park & Tilford Import Corp.* v. *International Brotherhood, etc.*, 165 Pac. (2d) 891, decided by the Supreme Court of California, January 31, 1946, is factually remarkably similar to this case. In that case the court said (l. c. 894):

"Under the National Labor Relations Act a union may engage in concerted activities to win over a majority of the employees to a closed shop, even though it does not then represent a majority. In section 1 of the National Labor Relations Act, 29 U. S. C. A. 151, Congress declared it 'to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce * * * by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.' As part of that policy employees were guaranteed the right 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid for protection.' 7, 29 U. S. C. A. 157. The act recognizes among other rights, peaceful picketing and boycotting of an employer by a labor union, whether or not its members are employed by him. Such rights may be exercised to secure a closed shop, for the act specifically designates the closed shop as one of the ob-

jectives of collective bargaining. 8 (3), 29 U. S. C. A. 158 (3). Section 2 of the act, 29 U. S. C. A. 152, defines the term 'employee' as 'not * * * limited to the employees of a particular employer' and thus makes it clear that the right of employees under section 7 of the act 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection' can be exercised by a union that does not represent the majority required for a closed shop contract or that does not even include any members who are in the employ of the particular employer. (Citations.) Thus the National Labor Relations Act does not require that a union represent a majority during the period of its activities for a closed shop, but only that it represent a majority when the agreement is made. A union may picket and boycott an employer's business with the object of so discouraging public support of the business that the non-union workers will face the prospect of the loss of their jobs. If a union could not do so unless it had the majority necessary for a closed shop agreement, it would be deprived of one of the most effective means of obtaining that majority."

The court further said at l. c. 897:

"The outcome of concerted activities for a closed shop depends largely on public sentiment. No competitive business can endure indefinitely without good will; no group of workers can long define the terms of its employment without public support. In seeking to enjoin defendants' lawful activities, plaintiff in effect asks the court to preclude any possibility that public sentiment will crystallize in favor of a closed shop in plaintiff's business. The court could not do so without denying to defendants their constitutional right of freedom of speech. *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293, 296, 64 S. Ct. 126, 88 L. Ed. 58; *Thornhill* v.

State of Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Carlson* v. *People of State of California*, 310 U. S. 106, 60 S. Ct. 736, 84 L. Ed. 1104."

And again at l. c. 898:

> "But the right of workmen to organize for the purpose of bargaining collectively would be effectually thwarted if each individual had the absolute right to remain 'unorganized.' "

In the Park & Tilford case the trial court enjoined all picketing. The Supreme Court modified that order exactly as the trial court modified the restraining order in this case (l. c. 900):

> "The judgment is therefore modified by limiting the injunction to the enjoining of defendants from making demands in connection with their concerted activities that plaintiffs sign a closed shop contract with defendants or coerce its employees to join defendant unions so long as they do not represent the requisite majority of plaintiff's employees."

III.

The fact that peaceable picketing may most seriously interfere with the conduct of business and even work apparent injustice to the employer or third persons, does not change otherwise lawful picketing into illegal conduct.

For a court to enjoin peaceable picketing, otherwise lawful, because such picketing affects, destroys, or interferes with the conduct of the business of the employer, in all its aspects is for the court to deny to labor its constitutional rights. The lower court enjoined picketing for every illegal purpose and this was accepted by petitioners, but the Supreme Court went further and enjoined picketing for a lawful purpose if such picketing affected, destroyed, or

interfered with the conduct of the business as specified (139). In this respect the court unlawfully impaired, abridged, and conditioned the exercise of a constitutional right.

In the case of *Park & Tilford* v. *International Brotherhood* (Calif. 165, Pacific Reporter (2d) 891, l. c. 896), the court said:

> "Picketing and boycotting unquestionably entail a hardship for an employer when they affect his business adversely. The adverse effect upon the employer's business that may result from the competition among workers for jobs is comparable to the adverse effect on his business that may result from his own competition with other employers. It is one of the risks of business. See *C. S. Smith Met. Market Co.* v. *Lyons*, 16 Cal. (2d) 389, 398, 106 P. (2d) 414. 'The law * * * permits workers to organize and use their combined power in the market, thus restoring, it is thought, the equality of bargaining power upon which the benefits of competition and free enterprise rest. Accordingly, the propriety of the object of workers' concerted activity does not depend upon a judicial determination of its fairness as between workers and employers.' 4 Restatement: Torts, p. 118. In *Stillwell Theatre Inc.* v. *Kaplan*, 259 N. Y. 405, 182 N. E. 63, 65, 84 A. L. R. 6, an employer, bound by a closed shop agreement with one union, suffered great hardship when his theatres were picketed by another that sought to win over his employees. The New York Court of Appeals denied injunctive relief, declaring: 'The Court of Appeals has for many years been disposed to leave the parties to peaceful labor disputes unmolested when economic rather than legal questions were involved. The employer, if threatened in his business life by the violence of the unions or by other wrongful acts, might have the aid of the court to preserve himself from damage threatened by the recourse to unlawful means, but the right of the work-

man to organize to better their condition has been fully recognized. The fact that such action may result in incidental injury to the employer does not in itself constitute a justification for issuing an injunction against such acts.' See *United States* v. *Hutcheson*, 312 U. S. 219, 232, 61 S. Ct. 463, 85 L. Ed. 788; *Fur Workers' Union No. 72* v. *Fur Workers' Union No. 21238*, 70 App. D. C. 122, 105 F. (2d) 1." (*Park & Tilford* v. *International Brotherhood, Pac. R.* (2d) 165, 891, l. c. 896.)

The same conclusions are announced by the Supreme Court in the case of *Senn* v. *Tile Layers Union*, 301 U. S. 468, l. c. 482, 57 S. Ct. 857, l. c. 863, and in the other decisions by this court.

In the three-judge case, *Yoerg Brewing Company* v. *Brennan*, 59 Fed. Sup. 635, the court said:

> "The right of labor to publicize its grievances if it does so in a peaceful manner, regardless of the apparent injustice to third parties, has been upheld by the Supreme Court in such sweeping language that no doubt can now exist as to this right. *Carlson* v. *People of State of California*, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104; *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58." (*Yoerg Brewing Company* v. *Brennan*, Fed. Sup. 59, 625, l. c. 632.)

IV.

The abridgement and impairment of labor's constitutional right to picket for a lawful cause amounts to a denial of such constitutional rights.

It is to be noted that the first amendment does not prohibit denial of the right of free speech and of the press and of assembly, but it prohibits abridgement thereof. The

choice of the word was not accidental and its use was to make emphatic that conduct far short of denial was prohibited, if the right were impaired or conditioned or abridged.

Webster defines "abridge" as follows:

> "To reduce, encompass, leaving still relatively complete; to make shorter; to diminish; curtail; as to abridge a visit or distance."

The Federal courts have long and repeatedly declared that freedom of speech and of the press are fundamental rights of all men under free government. These rights were not created by the original constitution, which contained no bill of rights. There omission from the original constitution was that it was clearly understood that these rights were inherent in men and their incorporation in the constitution was unnecessary. (2d Cooley's Constitutional Limitations; *Bridges* v. *California,* 314 U. S. 252; 62 S. Ct. 194.)

Amendment I to the constitution has always been liberally interpreted (*Baxley* v. *United States,* 134 Fed. (2d) 937.) This amendment must be taken as a demand of the broadest scope that explicit language read in context of a liberty-loving society will allow. (*Graham* v. *Jones,* 200 La. 137, 7 Southern (2d) 688.) (*State* v. *Butterworth,* 142 A. 57, 104 N. J. Law 579.)

Where impairment of these constitutional rights is asserted the court should be astute to examine the effect of the challenge and should weigh the circumstances and appraise the substantiality of the reasons advanced in support of the alleged denial. (*Am. Federation* v. *Bain,* 106 Pac. (2d) 544, 165 Oregon 183).

The action of the state court in conditioning the right peaceably to picket was to afford mere form and deny substance, and peaceable, lawful picketing is an economic

weapon to be used to better working relations. It can be effective only if it brings pressure including that of public opinion against the employer. Picketing that brings no pressure or inconvenience or even hardship is useless. When the state court conditioned the right of labor peaceably to picket for a lawful purpose, upon the condition that such picketing should not affect, destroy, or interfere with the conduct of certain phases of the business, it effectively and for all practical purposes took from the constitutional right its entire substance, leaving but a worthless shell.

Respectfully submitted,

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